

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 JOHN TURNER,

5 Petitioner

6 v.

7 TIMOTHY FILSON, et al.,

8 Respondents

Case No.: 2:19-cv-00493-JAD-CWH

**Order Granting *In Forma Pauperis*
Application and Directing Service and a
Response**

[ECF No. 4 & 1-1]

9 Petitioner John Turner challenges his 2016 state court conviction for child abuse and
10 endangerment.¹ Turner has filed a motion for leave to proceed *in forma pauperis*, which I grant
11 because I find that Turner cannot pay the filing fee. Having preliminarily reviewed the petition
12 as required by Rule 4 of the Rules Governing Section 2254 Cases in the United States District
13 Courts, I hereby direct service and a response.

14 IT IS THEREFORE ORDERED that the Clerk shall FILE the petition (ECF No. 1-1).

15 IT IS FURTHER ORDERED that Turner's application for leave to proceed *in forma*
16 *pauperis* [ECF No. 4] is **GRANTED**, and Turner will not be required to pay the filing fee.

17 IT IS FURTHER ORDERED that the Clerk shall add Nevada Attorney General Aaron D.
18 Ford as attorney for respondents and informally electronically serve the Nevada Attorney
19 General with a copy of the petition and this order.

20 IT IS FURTHER ORDERED that respondents have until June 21, 2019, to respond to the
21 petition; Turner will then have 30 days after service of the answer to file a reply. If respondents
22 file a motion to dismiss instead of an answer, the response and reply time to any such motion
23 will be governed by Local Rule LR 7-2(b).

24 IT IS FURTHER ORDERED that any procedural defenses raised by respondents in this
25 case must be raised together in a single consolidated motion to dismiss. Respondents may not
26 file a response in this case that consolidates their procedural defenses, if any, with their response

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28 ¹ ECF No. 1-1 at 1-2.

1 on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly
2 lacking merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a)
3 they must do so within the single motion to dismiss not in the answer; and (b) they must
4 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
5 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). All procedural defenses, including
6 exhaustion, must be raised by motion to dismiss. Because there appears to be a potential issue as
7 to timeliness in this case, and the state court record reveals several postconviction motions filed
8 by Turner that could potentially be considered tolling motions pursuant to 28 U.S.C. §
9 2244(d)(2), respondents should include all of Turner's postconviction motions as part of the
10 relevant state court record if they move to dismiss on timeliness grounds.

11 IT IS FURTHER ORDERED, in any answer filed on the merits, respondents must
12 specifically cite to and address the applicable state court written decision and state court record
13 materials, if any, regarding each claim within the response as to that claim.

14 IT IS FURTHER ORDERED that respondents must file a set of state court exhibits
15 relevant to the response filed to the petition, in chronological order and indexed as discussed,
16 *infra*. Respondents must send a hard copy of all exhibits filed in this case to the Las Vegas
17 Clerk's Office.

18 IT IS FURTHER ORDERED that all state court record exhibits filed in this matter must
19 be filed with a separate index of exhibits identifying the exhibits by number. The CM/ECF
20 attachments must be identified by the number(s) of the exhibit(s) in the attachment so that the
21 court and any reviewing court will be able to quickly determine from the face of the electronic
22 docket sheet which numbered exhibits are filed in which attachments.

23 Dated: April 22, 2019

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25 U.S. District Judge Jennifer A. Dorsey
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